

## **THE POLISH NUCLEAR ENERGY PROGRAMME APPEAL POSSIBILITIES IN THE STRATEGIC ENVIRONMENTAL ASSESSMENT**

The Polish Council of Ministers approved with Resolution 15/2014 on 28 January 2014 the Polish Nuclear Energy Programme (PNEP).<sup>1</sup> This happened after a Strategic Environmental Assessment (SEA) took place on the basis of the Polish Act on Access to Information on the Environment<sup>2</sup>, and on the basis of the Espoo Convention<sup>3</sup> and its Kiev Protocol<sup>4</sup>, the Aarhus Convention<sup>5</sup> and the EU SEA Directive.<sup>6</sup>

Over 50,000 people, environmental organisations and authorities participated in the public participation process, many of them from outside Poland. The *“Written Summary of the Strategic Environmental Assessment Results and Justification for the Selection of the Polish Nuclear Power Programme”* was sent only in the middle of December 2014 to the German Federal Government and the States of Mecklenburg-Vorpommern, Brandenburg, Berlin and Sachsen.<sup>7</sup> Environmental organisations and individuals outside of Poland did not receive any information about how their submissions were taken into account.

### **Appeal possibilities for environmental organisations and individuals**

Environmental organisations, irrespective of whether they have participated in the transboundary SEA process, have according art. 44 of the Polish Act on Access to Information on the Environment the right to appeal if they are of the opinion that the SEA has not been implemented lawfully.

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- 1 [http://www.bmub.bund.de/fileadmin/Daten\\_BMU/Download\\_PDF/Umweltpruefungen/polnische\\_kernenergie\\_programm\\_en\\_bf.pdf](http://www.bmub.bund.de/fileadmin/Daten_BMU/Download_PDF/Umweltpruefungen/polnische_kernenergie_programm_en_bf.pdf)
  - 2 The Act of 3 October 2008 on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments, Part IV, art. 46 – 58: Strategic Environmental Assessment;  
[http://ippc.mos.gov.pl/ippc/custom/ustawa\\_o\\_dostepie\\_do\\_informacji\\_o\\_srodowisku\\_English\(1\).pdf](http://ippc.mos.gov.pl/ippc/custom/ustawa_o_dostepie_do_informacji_o_srodowisku_English(1).pdf)
  - 3 Convention on Environmental Impact Assessment in a Transboundary Context done at Espoo (Finland), on 25 February 1991;  
[http://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/Espoo\\_Convention\\_authentic\\_ENG.pdf](http://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/Espoo_Convention_authentic_ENG.pdf)
  - 4 Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context done at Kiev on 21 May 2003;  
<http://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/protocolenglish.pdf>
  - 5 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark, on 25 June 1998;  
<http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>
  - 6 Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment;  
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0042&from=en>
  - 7 [http://www.mlul.brandenburg.de/i/pkep/pod\\_ooss\\_en.pdf](http://www.mlul.brandenburg.de/i/pkep/pod_ooss_en.pdf)

On the basis of the Aarhus Convention art. 9(2), individuals have the right to appeal as long as they can prove a sufficient interest. This includes those that have participated in the process and whose rights have been violated in any way.

The Polish appeal procedure has in this case two stages:

1. A first appeal can be lodged with the Prime Minister of the Polish Republic. He has to react on the appeal within a month. If this reaction is not satisfactory, a confirmatory appeal can be lodged with the Prime Minister. Also here, the Prime Minister's office has a month to react.
2. When the response of the Prime Minister is still not satisfactory, a complaint can be lodged at the Administrative Court of the Wojewód Warsaw. This complaint is lodged over the office of the Prime Minister.

### **Reasons for an appeal**

Greenpeace Poland has lodged an appeal on two accounts.

- Formal violations of the procedure: When the Polish Government took its decision in January 2014, it failed to publish the results of the SEA procedure as is prescribed in art. 55(3) of the Act on Access to Information on the Environment, as well as art. 9 of the EU SEA Directive and art. 11 of the Kiev Protocol. Because these results were published so late after the decision of the Council of Ministers, it should be assessed whether these results were indeed taken into due account as is prescribed in art. 8 of the Aarhus Convention.
- Not taking important viewpoints from public participation sufficiently into due account: Greenpeace Poland concluded that many viewpoints from participants in the process did not play or played an insufficient role during the finalisation of the text of the PNEP. This is confirmed by the "*Written Summary of the Strategic Environmental Assessment Results and Justification for the Selection of the Polish Nuclear Power Programme*" that was published in December 2014. This violates art. 6(8) of the Aarhus Convention, art. 11 of the Kiev Protocol, art. 8 of the EU SEA Directive, and art. 55(1) of the Act on Access to Information on the Environment.

Greenpeace Poland highlights in its appeal three issues:

- the PNEP was not compared with realistic alternative energy plans, especially not with plans based on the development of renewable energy sources and energy efficiency as they are for instance implemented in Germany, Austria, Denmark and Sweden;
- the PNEP excluded severe nuclear accidents with emissions of radioactive substances, although these cannot be excluded under extraordinary circumstances and can result in severe (transboundary) environmental impacts;
- the PNEP did not sufficiently take into account information concerning nuclear waste problems.

### **How to appeal**

When you think your rights under the Aarhus Convention, the Espoo Convention, the Kiev Protocol, the EU SEA Directive and/or the Act on Access to Information on the Environment have been violated, you can send an appeal to:

The President of the Council of Ministers of the Republic of Poland  
Prezes Rady Ministrów  
Aleje Ujazdowskie 1/3  
00-583 Warszawa, Poland

The complaint should be submitted over registered mail and preferably in the Polish language, as this is the official language of the country.

### **Complaint possibilities for national authorities**

National authorities cannot appeal directly, but have the following two possibilities:

- They can make a legal assessment of potential violations of the above mentioned national and international laws and conventions. Such an assessment can be sent as a formal protest to the attention of the Polish Government. If the assessment is made public or put to the disposal of Greenpeace, Greenpeace Poland may submit it as evidence in its ongoing legal procedures;
- They can submit a complaint on violation of the EU SEA Directive with the European Commission or the European Court of Justice. They can also submit a complaint to the Aarhus Convention Compliance Committee and/or the Espoo Convention Implementation Committee for an alleged breach of the Conventions.

Legal support can be obtained from the law firm:

Pietrzak, Sidor i Wspólnicy

Ul. Sandomierska 8 lok. 5

02-567 Warszawa, Polen

t: +48 22 898 22 18

f: +48 22 898 22 19

e: [sekretariat@pietrzaksidor.pl](mailto:sekretariat@pietrzaksidor.pl)

i: [www.pietrzaksidor.pl](http://www.pietrzaksidor.pl)

It would be appreciated if you would inform Greenpeace Poland from any appeal or complaint in this matter. This can happen in English or German.

Greenpeace Poland

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